respiratory therapy, which use suctioning to clear secretions from the throat of a patient, too strong of a vacuum could damage delicate tissues. The same is true in dental applications where a vacuum is used to keep the area of a tooth dry during dental work. Applicant notes there are many applications for vacuums in a home such as hand-held vacuum cleaners, which do not create a suction greater than 10 TORR. Consequently, insofar as the Examiner is reasoning that any pump is structurally capable of achieving a vacuum greater than 10 TORR, the Applicant traverses that conclusion of the Examiner. The Applicant concedes that Wennerstrum discloses a pump capable of achieving some vacuum. However, the Wennerstrum patent specifically discloses that complete drying is rarely desirable (Column 3, line 22). Based on the fact that complete drying is not desirable, Wennerstrum discloses that vacuum in the drying chamber is "between 10 and 35 TORR" (Column 13, line 24). This is in contrast to the current application where the pressure inside the chamber is reduced below 10 TORR and further that the "chamber is completely dry" and that there is "no moisture in the system" (Application page 7, lines 15-16). Consequently, Wennerstrum is a vacuum drying apparatus where it is undesirable for a sample to be completely dry, which is in contrast to the Applicant's invention where a completely dried sample is desirable. Consequently, the Applicant respectfully traverses any conclusion of the Examiner that the Wennerstrum teaches that a vacuum of less than 10 TORR is necessary to "obtain optimal result." Wennerstrum has specifically taught that the optimum result will not be achieved at a vacuum lower than 10 TORR. Consequently, the Examiner has used the teaching of the Applicant's own disclosure against the Applicant and is clearly prohibited hindsight reconstruction.

Claim Rejections 35 U.S.C. § 103

Claims 27-28, 30-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wennerstrum et al., U. S. Patent #4,882,851, in view of Dhaemers, U. S. Patent #5,546,678. The Examiner repeats the rejection of Claims 27-28 and 30-31 over the combination of Wennerstrum and Dhaemers using the same languages was previously used by the Examiner in prior Office Actions. Applicant incorporates by reference herein the arguments in response to the same rejection made in the Applicant's Request for Continued Examination filed September 8, 2005, Applicant's Response to an Office Action filed March 6, 2006, and Applicant's Request for Continued Examination mailed on November 3, 2006.

Claims 29, 33-34 were rejected under §103(a) as being unpatentable over Wennerstrum '851 in view of Dhaemers '678 and further in view of Hunter, U. S. Patent #6,085,443. The language used by the Examiner in rejecting these claims is identical to prior Office Actions and the Applicant incorporates by reference herein the Applicant's response to those Office Actions - the Applicant's Request for Continued Examination filed September 8, 2005, Applicant's Response to an Office Action filed March 6, 2006, and Applicant's Request for Continued Examination mailed on November 3, 2006.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wennerstrum '851 in view of Dhaemers '678 and in view of Davis, U. S. Patent #6,410,889. Applicant incorporates by reference herein the response to the rejections made in the Request for Continued Examination filed on September 8, 2006 and the response to the Examiner's Office Action filed on March 6, 2006. Applicant will not repeat those arguments again.

Claims 1 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sano et al., U. S. Patent #4,107,049 in view of Wennerstrum '851. The Examiner's rejections are word-for-word the same as in prior Office Actions. Applicant incorporates by reference herein the response to the rejections made in the Request for Continued Examination filed on September 8, 2006 and the response to the Examiner's Office Action filed on March 6, 2006. Applicant will not repeat those arguments again.

Claims 3-5, 7-8 and 27-28, 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sano et al. (U. S. Patent #4,107,049) in view of Wennerstrum et al. (U.S. Patent #4,882,851) as applied to Claims 1 and 23 above and further in view of Dhaemers (U.S. Patent #5,546,678.).

The grounds for rejection are word-for-word the same as in prior Office Actions. Applicant incorporates by reference herein the response to the rejections made in the Request for Continued Examination filed on September 8, 2006 and the response to the Examiner's Office Action filed on March 6, 2006. Applicant will not repeat those arguments again.

Wennerstrum reference where this is disclosed in the Wennerstrum reference. Without this citation, the Applicant is forced to conclude the Examiner is simply assuming that any pump can evacuate the drying chamber to less than 10 TORR to remedy any deficiencies in the prior art in order to deny the Applicant a patent. If the Examiner is permitted to assume facts to deny a patent to an Applicant, then no Applicant could qualify for a patent since an Examiner could always remedy deficiencies in the prior art by simply assuming necessary facts.

The Examiner dismisses the affidavits filed by Womble, Bacchi, and Regimand as "merely" affiants' opinions. Cases have long established such things as long felt but unmet need, success in the market place, etc. are objective indicia of nonobviousness. These affidavits establish these objective indicia of nonobviousness. The Examiner dismisses this factual evidence by the Applicant, claiming that they fail to prove the "criticality of the pressure from zero to 10 TORR". The Applicant is unaware of any requirement in patent law that requires a distinguishing feature be "critical." An element in a claim must not be anticipated under 35 U.S.C. § 102 or obvious under 35 U.S.C. § 103. Applicant respectfully requests clarification from the Examiner if the Examiner is imposing a new requirement not previously found in patent law regarding the "criticality" of claimed features to distinguish an application from prior art.

CONCLUSION

Having answered all rejections of the Examiner, it is believed that the claims remaining in the Application are in a condition for allowance and the same is respectfully requested.

This the 26 day of April, 2007.

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Claims 6, 9, 29, 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sano et al. (U. S. Patent #4,107,049) in view of Wennerstrum et al. (U.S. Patent #4,882,851) and Dhaemers (U.S. Patent #5,546,678.) as applied to Claims 5, 28 above and further in view of Hunter et al. (U.S. Patent #6,085,443) .

The grounds for rejection are word-for-word the same as in prior Office Actions. Applicant incorporates by reference herein the response to the rejections made in the Request for Continued Examination filed on September 8, 2006 and the response to the Examiner's Office Action filed on March 6, 2006. Applicant will not repeat those arguments again.

Claims 10, 21, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sano et al. (U. S. Patent #4,107,049) in view of Wennerstrum et al. (U.S. Patent #4,882,851) and Dhaemers (U.S. Patent #5,546,678.) as applied to Claims 5, 28 above and further in view of Davis et al. (U.S. Patent #6,410,889).

The grounds for rejection are word-for-word the same as in prior Office Actions. Applicant incorporates by reference herein the response to the rejections made in the Request for Continued Examination filed on September 8, 2006 and the response to the Examiner's Office Action filed on March 6, 2006. Applicant will not repeat those arguments again.

Examiner's Response to Arguments

The Examiner states that the Applicant's claim do not define over the prior art references. Applicant traverses this conclusion of the Examiner. In fact, the prior art Wennerstrum reference does not disclose a vacuum less than 10 TORR. The Examiner responds to that by saying that "it is merely an obvious matter in order to obtain an optimal result." The Examiner is apparently relying on the Examiner's own experience. The Examiner cites no reference in support of this conclusion. In fact, the Wennerstrum reference, as was cited earlier, clearly states that optimal results are found in a vacuum range outside of that cited by the Examiner and that an optimal result requires that the product is not "completely dried." This is in contrast to the Applicant's invention where complete drying is the optimal result. The Examiner asserts, without any proof, that the pump Wennerstrum is capable of evacuating air into the sealable chamber (10) until air pressure in the sealable chamber is less than 10 TORR. Applicant respectfully requests a citation to the